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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/926,789	09/03/2002	Tohru Takahashi		8652

7590

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EXAMINER

SALVATORE, LYNDIA

ART UNIT

PAPER NUMBER

1771

DATE MAILED: 12/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/926,789

Applicant(s)

TAKAHASHI, TOHRU

Examiner

Lynda M Salvatore

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 September 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) 6-11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 12-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of Group I, claims 1-5 and 12-14, filed in the reply on 09/04/04 is acknowledged. The traversal is on the ground(s) that unity of invention exists between Group I and Group II. Applicant's arguments are not found persuasive on the grounds that though Group I and Group II claims share common technical features; they do not meet the definition of "special technical feature" and thus, fail to provide a distinction over the prior art. Thus, they do not meet the criteria found in PCT rules 13.1 and 13.2. As there is no special technical feature, lack of unity is maintained. Claims 1-5 and 12-14 will be examined on the merits. The requirement is still deemed proper and is therefore made FINAL.

However, if claims 1-5 and 12-14 directed to the product were found allowable, then pursuant to the procedures set forth in the Official Gazette notice dated March 26, 1996 (1184 O.G. 86), claims 6-11, directed to the process of making the patentable product, previously withdrawn from consideration as a result of a restriction requirement, would be subject to being rejoined, provided they are commensurate in scope with any allowed product claim.

### ***Claim Objections***

2. Claims 1 and 2 are objected to because of the following informalities: In line 5 of claim 1, there is an extra spacing in the word "portions". In line 6 of claim 2, there is period at the letter "B". Appropriate correction is required.

*Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-5 and 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pickens, Jr. et al., US 4389442 in view of Takahashi, EP 0 862 868 A1.

The patent issued to Pickens et al., teaches a loop fabric comprising a composite (26) formed from a needled fibrous batt (16) and another layer which can be a cloth or film of woven, knitted fabric or extruded film (Abstract, Figure 2, and Column 2, 45-65). Pickens et al., teaches needling the composite fibers from batt (16) such that fibers from batt (16) pass through the cloth or film of woven, knitted fabric to form loops (34) (Column 4, 5-20, and Figure 2). Pickens et al., teaches employing a fibrous batt comprising polypropylene staple fibers (Column 20, 6-7). In this instance, the Examiner considers the fibrous batt analogous to Applicant's filamentous layer B. With regard to the negative limitations of providing areas not thermally press-joined together as recited in claims 2 and 3, Pickens et al., clearly illustrates in figures 2 and 3, areas that are not thermally joined. In other words, as illustrated in Applicant's figure 3, the Examiner is treating said negative limitations to mean that the loop fabric has areas absent of loops. With regard to the laminating and joining limitations, said limitations constitute method limitations not germane to the final product. The presence of process limitations on product

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claims, in which the product does not otherwise patentably distinguish over the prior art, cannot impart patentability to the product. *In re Stephens*, 145 USPQ 656

It is the position of the Examiner that the prior art of Pickens et al., meets the structural limitations of joining together two fibrous layers by needling such that a portion of the fibers present in one layer passes through the second layer to form a plurality of loops. Although, Pickens et al., fails to specifically teach laminating, it appears that the final product produced by Pickens et al., is structurally similar to that of the prior art though produced by a different process. The burden is shifted to Applicant to come forward with evidence establishing an unobvious difference between the claimed product and the prior art product. *In re Marosi*, 218 USPQ 289,292

With regard to the entangling limitation, needle punching would inherently entangle said fibers from each layer together. Pickens et al., teaches that the loop fabric is suitable for use as a wall covering (Title).

Pickens et al., teaches employing a woven or knitted cloth layer joined to the fibrous batt, but fails to teach a thermoplastic non-woven fabric, however, the European patent application issued to Takahashi teaches a non-woven base material suitable for use in loop materials (Abstract). Said non-woven material comprises conjugate polymer filaments such as those having a low and high melting polymers (Page 2, 50-59). Specifically, Takahashi teaches using sheath core type filaments (Page 3, 54-59). Takahashi teaches heat bonding the non-woven such that the low and high melting polymer filaments soften (Page 4, 15-25). Takahashi teaches loop materials are usually employed in variety of uses such as clothing, interior materials, and or

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industrial materials (Page 2, 15-20). Said non-woven exhibits high joining durability (Page 2, 45-49).

Therefore, motivated by the desire to manufacture a loop material exhibiting a high joining durability it would have been obvious to one having ordinary skill in the art to substitute the woven or knitted cloth layer in loop composite structure taught by Pickens et al., with the non-woven base layer taught by Takahahi.

With regard to claim 4, the combination of prior art fails to specifically teach percentage of areas not thermally joined, however, it is the position of the Examiner that it would have been obvious to one having ordinary skill in the art to optimize the percentage of area not thermally joined as a function of joining durability. It has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233

#### ***Conclusion***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lynda M Salvatore whose telephone number is 571-272-1482. The examiner can normally be reached on M-F.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1482. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application-Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

November 18, 2004

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